

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>Applicant:</b>	Biran et al.	<b>Conf. No.:</b>	8413
<b>Serial No.:</b>	10/733,734	<b>Art Unit:</b>	2146
<b>Filed:</b>	12/11/2003	<b>Examiner:</b>	Musa, Abdelnabio
<b>Title:</b>	RDMA NETWORK INTERFACE CONTROLLER WITH CUT-THROUGH IMPLEMENTATION FOR ALIGNED DDP SEGMENTS BASED ON VALIDITY OF CYCLICAL REDUNDANCY CHECK	<b>Docket No.:</b>	FIS920030290US1 (IBMF-0039)

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Sir:

Applicants respectfully request a panel of experienced Examiners perform a detailed review of appealable issue for the above-identified patent application pursuant to the Pre-Appeal Brief Conference Pilot Program. Notice of Appeal has been filed together with this Request.

Applicants submit that the above-identified application is not in condition for appeal because the final rejection is clearly defective due to errors in facts and in law as the relied upon references clearly miss some claim features. Claims 1-40 are pending in this application.

First it is noted that the Amendment to the Final Office Action was not entered. The proposed amendments to claims 20, 22-31, 35, 36 and 38-40 were to correct typographical errors. Specifically, there is no reference letter c) in the base claim and this has been removed from the dependent claims. This amendment was not entered by the Examiner for unknown reasons. Since the proposed amendments do not change the scope of the claims, Applicants are willing to proceed with the claims without the entered amendment.

In the Office Action, claims 1-40 were rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Craft et al. (US 7,124,205), hereinafter “Craft”, in view of Starr et al. (US Pub. No. 2004/0064590 A1), hereinafter “Starr”.

With respect to independent claims 1, 19 and 37, Craft does not disclose “dropping the data transfer and not confirming reception”. The Office points to col. 23, line 8 and col. 40, line 50 of Craft; however, a careful reading of those passages reveals that rather than dropping the data transfer and not confirming reception, the connection is “flushed” back to the host computer for slow-path processing (col. 40, lines 50-57). Likewise Starr, teaches flushing back to the host computer [paragraph 0059]. Thus, neither Craft nor Starr discloses an element of Applicants claims.

In the Advisory Action, the element of “dropping the data transfer and not confirming reception” in the claims is not addressed by the Office. The citation of col. 39-42 of Craft does not show this element. Therefore, the rejection is not proper and should be removed.

The Office, in the Advisory Action at page 2, last paragraph also states:

“The examiner interpreted the claims to its broadest reason (sic) interpretation and has taken language of the claims as written, more detailing from the specifications need (sic) to be inserted into the claims in regards to handling a data transfer in a network to clearly point out the nature of the claimed invention. Accordantly (sic) amendment to the claims with additional language

from the specification would place the application in better form and might overcome the art cited..”

A phone conversation with the Examiner failed to yield a better understanding of the meaning in the above passage. It appears the Office feels the cited art could be overcome with appropriate claim language yet there is no guidance given. Further, the Examiner has not shown an important claimed element in the cited references, thus a *prima facie* case of obviousness has not been made. For these reasons, Applicants request withdrawal of the rejections.

The dependent claims are believed allowable for the same reasons, as well as for their own additional features.

Applicants respectfully submit that the application is in condition for allowance. Should the Examiner believe that anything further is necessary to place the application in better condition for allowance, the Examiner is requested to contact Applicants’ undersigned attorney at the telephone number listed below.

In view of the foregoing, Applicants submit that the final rejection is clearly defective, and this application is not in condition for appeal and should either be allowed as is, or re-opened for further prosecution.

Respectfully submitted,

/Carl F. Ruoff/

Date: July 9, 2008

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